



EQUATORIAL GUINEA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

19TH SESSION OF THE UPR WORKING GROUP, APRIL-MAY 2014

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in December 2009, Equatorial Guinea supported 86 recommendations,¹ agreed to consider 25,² and rejected four – one outright and three after further consideration.³ to ratify the Rome Statute of the International Criminal Court and the Second Optional to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; to allow access to the UN Rapporteurs and others to military installations, and to allow political parties and the media to operate freely.

Amnesty International regrets that Equatorial Guinea rejected those important recommendations and that in the intervening four and a half years it has made little progress in implementing the accepted recommendations.

*Equatorial Guinea agreed to consider ratifying the Optional Protocol to the Convention against Torture;⁴ however, no steps have been taken in that direction. Despite Law 6/2006 on the Prevention and Punishment of Torture (*Lei 6/2006 sobre la Prevención y Sanción de la Tortura*), of November 2006, torture persists.*

Equatorial Guinea has not fulfilled its commitment to end incommunicado, secret detention and enforced disappearances and several such cases have been brought to Amnesty International's attention during the reporting period.⁵

Amnesty International acknowledges that since 2010 it has received no reports of abductions by Equatorial Guinean security forces of political opponents exiled in neighbouring countries. However, the confinement of political opponents to their areas of origin is common practice, as it is the secret transfer of detainees to prisons in other parts of the country.

During the period under review, no steps were taken to end arbitrary arrest and detention of political opponents,⁶ who are often subjected to prolonged detention without charge or trial. Amnesty International is also concerned about the practice of arresting relatives of political opponents sought by the authorities.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Amnesty International notes serious shortcomings regarding the protection of human rights in the Constitution and in national legislation, as well as important gaps in the ratification of international human rights treaties.

Equatorial Guinea still uses the 1967 Spanish Penal Code and Penal Procedures Code, which breach Equatorial Guinea's international human rights commitments as well as provisions in its Constitution.

Equatorial Guinea is already party to several international human rights treaties. However, it has not yet ratified other treaties as agreed to by Equatorial Guinea in the 2009 UPR.⁷ Moreover, although Article 8 of the Constitution states that the State of Equatorial Guinea will abide by all standards of international law, particularly the rights and obligations set out in the treaties to which it is a party, no legislation has been enacted to reflect the provisions of those treaties.

There are no independent human rights institutions in the country and the judiciary lacks independence. Provincial Courts were created by the Organic Law of the Judiciary (Law 5/2009 of 18 May 2009) to replace the Appeal Courts, but they are not yet functioning nationwide.

A revised Constitution was approved by referendum in November 2011 and promulgated in February 2012. The declared aim of the constitutional revision was to "broaden the judicial framework for the exercise of fundamental freedoms". However, the revised Constitution fails to increase the limited human rights provisions already enshrined in the 1995 Constitution which include the right to life and physical integrity; freedom of movement; freedom of expression, assembly and association; the right not to be deprived of liberty except by a judicial order or in cases of *delito flagrante*. These provisions are routinely violated.

The amended Constitution increases presidential powers and creates an audit court and an ombudsman. Amnesty International is concerned, however, that the ombudsman is appointed by the President. Given the lack of independence of state institutions responsible for the protection of human rights it is all the more important that the ombudsman is established in accordance with the Paris Principles and fully independent of government and presidential control.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Despite repeated promises to improve the human rights situation in the country, respect for human rights, particularly freedom of expression, assembly and association, as well as freedom of the press, remains severely curtailed. People are arbitrarily arrested and imprisoned for exercising or attempting to exercise these rights. Incommunicado or secret detention, and prolonged pre-trial detention without charge are common, as is the practice of arresting families of political activists, in effect as hostages. Torture and other ill-treatment remain a concern and unlawful killings by soldiers are not uncommon. Underlying these violations is the impunity which is virtually guaranteed by the absence of the rule of law and a weak and politicised judicial system which itself often violates human rights. Only rarely are human rights violations investigated and the perpetrators brought to justice.

The death penalty

Equatorial Guinea retains the death penalty and rejected recommendations related to its abolition made during its first UPR. The death penalty remains mandatory for premeditated murder. It has also been applied to political opponents convicted of crimes against the state in unfair trial, usually by military courts.

On 21 August 2010, four political opponents, who had earlier been abducted by Equatorial Guinean security personnel from exile in a neighbouring country and imprisoned in the Black Beach prison in Malabo, were convicted by a military court of attempting to kill President Obiang, as well as of treason and terrorism, and sentenced to death.⁸ They were executed in secret within one hour of being sentenced, and one day after the UN Working Group on the use of mercenaries left the country without having been allowed to see them. The speedy execution deprived the four men of their right to appeal against their sentence and to seek clemency. They were also denied the right to see their families. President Obiang justified the speedy execution by saying that the men presented a threat to his life and that of his family.

Unfair trials

The Constitution provides for the right to be tried fairly.⁹ However, political opponents and other critics have been tried on trumped-up charges usually of plotting against the government. Whether tried by a military or civilian court, invariably these trials fail to meet international standards of fairness. The courts accept confessions obtained under torture, including in cases where this constitutes the sole evidence against

the defendants.

The Organic Law of the Judiciary limits the use of military courts to strictly military matters.¹⁰ However, they have been used to try civilians in the past four years. Judges and defence counsel are appointed by military or political authorities and lack legal training.

In March 2010, Marcelino Nguema, Santiago Asumu and seven Nigerian nationals were unfairly tried by the Malabo Appeal Court (*Tribunal de Apelación*)¹¹ charged with attempting to assassinate President Obiang. The charges related to an alleged attack on the presidential palace on 17 February 2009. The two Equatorial Guineans were acquitted while the Nigerian nationals were convicted and each sentenced to 12 years' imprisonment. They had been arrested at sea and were convicted on the basis of weather reports for 17 February 2009, according to which the weather was good and with good visibility; consequently, the authorities claimed, their presence in Equatorial Guinean waters on that day was not justified other than to participate in the attack. The nine defendants had been held incommunicado and without charge for nearly a year and had been tortured during that time.¹² Despite their acquittal, Marcelino Nguema and Santiago Asumu remained in prison. Although forbidden by law, they were tried again in August 2010 on the same charges, together with four other men who were sentenced to death (see above), this time by a military court which sentenced them to 20 years' imprisonment. None of the defendants were informed about their trial until they arrived in court, where two military officers, without legal training, were allocated to defend them. In both trials, the court accepted as evidence confessions extracted under torture.

Torture and other ill-treatment

Amnesty International has recorded several cases of torture or other ill-treatment since 2009. In addition to being subjected to physical ill-treatment, political detainees may be subjected to other forms of cruel, inhuman or degrading treatment or punishment, including being held in prolonged incommunicado detention without charge or trial and being denied adequate medical assistance.

Torture and other ill-treatment occur mainly in pre-trial detention to extract confessions which are then used in court to convict people in unfair trials. Agustín Esono Nsogo, held without charge or trial since his arrest in October 2012,¹³ was tortured on three occasions immediately after his arrest to force him to confess to a plot to destabilise the country. He was beaten on both wrists, the soles of the feet and the head with batons and as a result lost the hearing in his left ear.

In some cases, the torture resulted in death. Rufino Masié died on 19 January 2012 after being beaten by the police in Bata. The police arrested him without a warrant on suspicion of involvement in a theft of merchandise. When he arrived at Bata police station he was unconscious and bore signs of beatings. He died in hospital two hours later.

Marcelino Buichekú Epan died on 30 June 2013 after having been beaten by soldiers who stopped him at a roadblock in Malabo. After he fainted the soldiers took him to their post where they continued to beat him. They then threw him into the street unconscious, where he was found hours later by a passerby. He died in hospital one hour after being admitted. No one has been held accountable for this or other similar incidents.

Unlawful killings

The Constitution guarantees the right to life. However, police and soldiers continue to enjoy almost total impunity for unlawful killings, including extrajudicial executions. Since 2009, several people, including foreigners, have been killed at road blocks after refusing to pay bribes. There have been no investigations into most of these cases.

Only one soldier is known to have been prosecuted for the extrajudicial execution of Policarpo Monsuy Ncogo in November 2010, following an argument with a member of the Army Special Forces. As Policarpo Monsuy lay on the ground, the soldier shot him in the back of the head. A month later the soldier was convicted of his killing and sentenced to 28 years' imprisonment.

Other unlawful killings have occurred in the context of prisoner escapes in May and June 2012. Blas Engó was reportedly shot at close range by a soldier just outside the prison in Bata as he tried to escape with 46 other prisoners on the night of 14 May. A month later, about 20 prisoners

escaped from Black Beach prison in Malabo. Amnesty International was informed that at least one of them was captured a week later and shot dead. No one has been held accountable for these deaths.

Arbitrary arrest and detention of political opponents and their families and confinement

Arbitrary arrest and detention of political activists and others continue. The length of detention varies from days to months.

There was an upsurge in arbitrary arrests following the mass uprising in North Africa and in the run-up to the African Union Summit held in Malabo in June 2011. Several political opponents and some 100 students were arrested as a pre-emptive measure to prevent demonstrations before the summit.¹⁴

Between 8 and 15 May 2013, the organisers of a peaceful demonstration protesting the authorities' refusal to legalise a political party,¹⁵ were arbitrarily arrested and held for about two weeks, before being released uncharged. They included Clara Nsegue Eyí, the founder of the unregistered political party, who was sent to Mongomo on the mainland and imprisoned in the Gendarmerie. Upon her release without charge in late May, she was verbally banned from leaving Mongomo. However, she ignored the order and returned to Malabo where she was arrested two weeks later, in late June, and sent back to Mongomo where she is currently held without charge in the Gendarmerie.¹⁶ Also arrested was Jerónimo Ndong on 15 May, who was held for several hours. He was re-arrested on 20 May and released seven days later without charge.¹⁷

Amnesty International is concerned about the practice of confining detainees and pardoned prisoners to their areas of origin, regardless of their actual place of residence, and of arresting relatives of political activists to force them to hand themselves in to the authorities. On 20 May, the wife and brother of Jerónimo Ndong (see above) were arrested and detained for several hours until he handed himself in at the police station.¹⁸

Relatives and friends of two political prisoners, who escaped from Evinayong prison in October 2010, and of those suspected of aiding their escape, were arbitrarily arrested and held without charge for over one year in Bata Prison. They included several women and an infant. They appeared to have been arrested solely because of their links with the escaped prisoners and those suspected of aiding their escape.

Prolonged pre-trial detention, incommunicado detention and secret transfer of detainees

It is common practice to secretly transfer political detainees to prisons or police stations in other cities, where they are then held incommunicado for some time, becoming, in effect, victims of enforced disappearances. In all the cases known to Amnesty International, the authorities denied or refused to acknowledge that they were holding the detainees or to give details of their whereabouts.

Agustín Esono, (see above) was arrested in Bata and secretly taken to Black Beach prison in Malabo where he was held incommunicado for one week. His lawyer, Fabián Nsue, was arrested in Black Beach prison while visiting his client, and held incommunicado for three days, before being transferred to the central police station. He was released uncharged five days later.

Freedom of expression, assembly and association

The Constitution guarantees freedom of expression, assembly and association. However, these rights are routinely suppressed in Equatorial Guinea. Although the law does not require official permission to hold demonstrations, these are not allowed and the organisers and those who attempt to demonstrate are often arrested.

In March 2011, the government banned all demonstrations and deployed large numbers of security personnel in the streets to enforce the ban. Requests for peaceful rallies to celebrate May Day were turned down. In November 2011, police dispersed rallies against the constitutional reforms prior to the referendum.

Demonstrations planned for May and June 2013 in Malabo were also forbidden. On both occasions, the presence of security personnel in the streets was stepped up and the city centre cordoned off. The June demonstration, to protest irregularities of the general elections on 26 May, was called off owing to threats of violence against the demonstrators.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Equatorial Guinea to:

Death penalty

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Unfair trials

- Ensure that all trials are conducted in accordance with international standards for fair trials and that no one is tried twice for the same offence;
- Ensure that military courts are used solely to try military personnel on purely military matters;
- Ensure that statements made under torture are not admitted as evidence in court and where necessary to order a re-trial.

Torture and other ill-treatment

- Fully implement Law 6/2006 banning torture and to bring to justice those suspected of involvement in torture, including political officials;
- Ensure reparation, including compensation, for victims of torture as stipulated in Law 6/2006;
- Ratify the Optional Protocol to the Convention against Torture.

Arbitrary arrest or confinement of political opponents and their families

- Ensure that nobody is arrested for exercising their rights to freedom of expression, assembly and association;
- Bring to an immediate end the practice of arresting the families of political opponents as hostages.

Unlawful killings

- Carry out investigations into all unlawful killings by security personnel and to prosecute those responsible;
- End the illegal practice of confining political opponents to their places of origin regardless of where they reside.

Prolonged pre-trial detention/incommunicado detention/secret transfers

- Ensure that detainees are brought before a judge to determine the legality of their detention within the 72 hours prescribed by law;
- Ensure that all those suspected of a recognizable criminal offence are promptly charged and tried within a reasonable time;
- End immediately the practice of incommunicado and secret detention and to disclose the whereabouts of all detained;
- Ensure that all detainees are officially registered and have access to their families and lawyers;
- Ratify the Convention for the Protection of All Persons from Enforced Disappearance.

Freedom of expression/assembly/association

- End the restrictions on the rights to freedom of expression, assembly and association and to refrain from arresting those who exercise these rights.

ENDNOTES

¹ Report of the Working Group of the Universal Periodic Review of Equatorial Guinea, 4 January 2010 (A/HRC/13/16), paragraph 70

² *Ibid* paragraph 71

³ *Ibid*, paragraph 72, recommendation by the USA

⁴ Report of the Working Group of the Universal Periodic Review of Equatorial Guinea, *op. cit* paragraph 71, recommendations 1 (UK, France, Chile, Czech Republic, Spain and Argentina). See also recommendations related to ending torture; paragraph 70, recommendations 17 (Argentina) 34-39 (USA, UK, Spain, Switzerland, Canada and Chile) and recommendation 40 (Netherlands)

⁵ *Ibid*, paragraph 70, recommendations 28-29(France and Ghana)

⁶ *Ibid*, recommendations 27-29 (Italy, France and Ghana)

⁷ Those treaties not yet ratified by Equatorial Guinea include: the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty; the Optional Protocol to CAT; the International Convention for the protection of All Persons from Enforced Disappearance; the International Convention on the protection of the Rights of All Migrant Workers and members of their Families; the Rome Statute of the International Criminal Court.

⁸ See Amnesty International Press Release of 23 August 2010: Execution of four men in Equatorial Guinea condemned

⁹ Ley Fundamental de la República de Guinea Ecuatorial, Article 13

¹⁰ Law 5/2009 of 18 May 2009 which revised Organic Law of the Judiciary (law 10/1984), Article 11

¹¹ Now called Audiencia Provincial de Bioko Norte (Bioko Norte Provincial Court)

¹² Amnesty International Public Statement Equatorial Guinea: Concerns about the recent trial of political opponents and Nigerian nationals (AI index: AFR 24/007/2010) of 19 May 2010; and Press Release Equatorial Guinea urged to retry Nigerian coup suspects (AI Index: PRE01/167/2010) 21 May 2010

¹³ This continues to be the case at the time of preparing this submission

¹⁴ See Amnesty International Press Release: Equatorial Guinea: surge in arbitrary arrests ahead of the AU summit (dated 20 June 2011) which can be found in <http://www.amnesty.org/en/news/equatorial-guinea-surge-in-arbitrary-arrests-ahead-of-au-summit-2011-06-20>

¹⁵ The Partido Democrático de la Justicia Social – PDJS (Democratic Party for Social Justice) which was created in January 2013 but the authorities refuse to register on the grounds that the founders of the party are from Mongomo, the area where President Obiang comes from

¹⁶ See Amnesty International Urgent Action 210/13, Fears for health of detained female activist (AI Index AFR 24/11/2013), 5 August 2013

¹⁷ Amnesty International Press Release: Equatorial Guinea targets opposition ahead of elections, of 15 May 2013 (<http://www.amnesty.org/en/news/equatorial-guinea-targets-opposition-ahead-of-elections-2013-05-15>)

¹⁸ Amnesty International Urgent Action 132/13, Family of opposition leader arrested (AI Index AFR 24/002/2013), 20 May 2013